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Compensation of Certain Professional and Scientific Personnel (Public Law 80-313-Type Positions)

THE ACT OF AUGUST 1, 1947 (PUBLIC LAW 80-313), AS AMENDED (5 U.S.C. 1161-1163) (1951-1961 Supp.)

That (a) the Secretary of the Interior is authorized to establish and fix the compensation for not more than eight scientific or professional positions in the Department of the Interior, each such position being established to effectuate those research and development functions of such department which require the services of specially qualified personnel.

(b) The Secretary of Agriculture is authorized to establish and fix the compensation for not more than twenty scientific or professional positions in the Department of Agriculture, each such position being established to effectuate those research and development functions of such department which require the services of specially qualified personnel.

(c) The Secretary of Health, Education, and Welfare is authorized to establish and fix the compensation for not more than thirteen scientific or professional positions in the Department of Health, Education, and Welfare, each such position being established to effectuate those research and development functions of such department which require the services of specially qualified personnel.

(d) The Secretary of Commerce is authorized to establish and fix the compensation for not more than thirty scientific or professional positions in the Department of Commerce, of which not less than five shall be for the United States Patent Office in its examining and related activities, each such position being established to effectuate those research and development functions of such department which require the services of specially qualified personnel.

(e) The Postmaster General is authorized to establish and fix the compensation for not more than three scientific or professional positions in the Post Office Department, each such position being established to effectuate those research and development functions of such Department which require the services of specially qualified personnel.

(f) The Director of the United States Arms Control and Disarmament Agency is authorized to establish and fix the compensation for not more than fourteen scientific or professional positions in the United States Arms Control and Disarmament Agency, each such position being established to effectuate those research and development functions of such agency which require the services of specially qualified personnel.

(g) The Librarian of Congress is authorized to establish and fix the compensation for not more than eight scientific or professional positions in the Library of Congress, each such position being established to carry out research and development functions of the Library which require the services of specially qualified personnel. Section 2(a) shall not apply to positions established under this subsection.

SEC. 2. (a) Positions created pursuant to this Act shall be included in the competitive civil service of the United States, but appointments to such positions shall be made without competitive examination upon approval of the proposed appointee's qualifications by the United States Civil Service Commission or such officers and agents as the Commission may designate for this purpose.

(b) The per annum rates of compensation for positions established pursuant to the provisions of this Act shall not be less than the

SECTION 1001
(a) (1) OF THE
ACT OF OCTOBER
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minimum rate of grade 16 of the General Schedule of the Classification Act of 1949, as amended, nor more than the highest rate of grade 18 of the General Schedule of such Act and shall be subject to the approval of the United States Civil Service Commission.

(c) In any case in which, subsequent to February 1, 1952, provisions are included in a general appropriation Act authorizing an agency of the Government referred to in this Act to establish and fix the compensation of scientific or professional positions similar to those authorized by this Act, the number of such positions authorized by this Act shall, unless otherwise expressly provided, be deemed to have been reduced by the number of positions authorized by the provisions of such appropriation Act.

SEC. 1581. The head of each department or agency authorized to establish and fix the compensation of positions under this Act shall submit to the Congress, not later than December 31 of each year, a report setting forth the number of positions established pursuant to this Act in his department or agency during that calendar year, and the name, rate of compensation, and description of the qualifications of each incumbent, together with a statement of the functions performed by each. In any instance in which any such department or agency head may consider full public report on these items detrimental to the national security, such department or agency head is authorized to omit such items from his annual report and, in lieu thereof, to present such information in executive sessions of such committees of the Senate and House of Representatives as the presiding officers of those bodies shall designate.

SECTIONS 1581 AND 1582 OF TITLE 10, UNITED STATES CODE

SEC. 1581. Appointment: professional and scientific services. (a) The Secretary of Defense may establish not more than five hundred thirty civilian positions in the Department

¹ Twelve of these positions were transferred to the National Aeronautics and Space Administration by § 205 of the President's Transfer Plan of January 14, 1959, eff. Mar. 15, 1959, 25 F.R. 2151.

of Defense to carry out research and development relating to the national defense, military medicine, and other activities of the Department of Defense that require the services of specially qualified scientists or professional personnel.

(b) Subject to the Civil Service Commission's approval as to rates, the Secretary may fix the compensation for positions established under subsection (a). However, the per annum compensation may not be less than the minimum rate of grade 16 of the General Schedule of the Classification Act of 1949, as amended, nor more than the highest rate of grade 18 of the General Schedule of such Act.

(c) Positions established under subsection (a) are in the classified civil service of the United States. However, if the Civil Service Commission or a person designated by it approves a proposed appointee's qualifications, no competitive examination may be required.

SEC. 1582. Professional and scientific services: reports to Congress on appointments. The Secretary of Defense shall report to Congress not later than February 1 of each year on the number of positions established under section 1581 of this title during the immediately preceding calendar year. The report shall list the name, rate of compensation, functions, and qualifications of each incumbent. However, the Secretary may omit any item, if he considers that a full public report on it would be detrimental to the national security. In such a case, he shall present the information, in executive session, to such committees of the Senate and the House of Representatives as are designated by the presiding officers of those bodies.

SECTION 208(g) OF THE PUBLIC HEALTH SERVICE ACT, AS AMENDED (42 U.S.C. 210(g))

SEC. 208. * * * (g) The Administrator ² is authorized to establish and fix the compensation for, within the Public Health Service, not more than one hundred and fifty positions, of which not less than one hundred and fifteen shall be

² All functions of the Administrator were transferred to the Secretary of Health, Education, and Welfare by § 5 of 1953 Reorg. Plan No. 1.

for the National Institutes of Health, in the professional, scientific, and executive service, each such position being established to effectuate those research and development activities of the Public Health Service which require the services of specially qualified scientific, professional, and administrative personnel: *Provided*, That the rates of compensation for positions established pursuant to the provisions of this subsection shall not be less than the minimum rate of grade 16 of the General Schedule of the Classification Act of 1949, as amended, nor more than the highest rate of grade 18 of the General Schedule of such Act, and shall be subject to the approval of the Civil Service Commission. Positions created pursuant to this subsection shall be included in the classified civil service of the United States, but appointments to such positions shall be made without competitive examination upon approval of the proposed appointee's qualifications by the Civil Service Commission or such officers or agents as it may designate for this purpose.

SECTION 302(h) OF THE FEDERAL AVIATION ACT OF 1958, AS AMENDED (49 U.S.C. 1343(f))

SEC. 302. * * * (h) The administrator is

authorized to establish and fix the compensation for not to exceed twenty positions of officers and employees of the Agency of a scientific or professional nature without regard to the Classification Act of 1949, as amended, each such position being established to effectuate those research, development, and related activities of the Agency which require the services of specially qualified scientific or professional personnel. The rates of basic compensation for positions established pursuant to this subsection shall not exceed the maximum rate payable under the Act of August 1, 1947 (Public Law 313, Eightieth Congress) as amended, and Title V of the Act of July 21, 1956 (Public Law 854, Eighty-fourth Congress) and shall be subject to the approval of the Civil Service Commission. Positions created pursuant to this subsection shall be included in the classified civil service of the United States, but appointment to such positions shall be made without competitive examination upon approval of the proposed appointee's qualifications by the Civil Service Commission or such officers or agents as it may designate for this purpose.

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Subchapter 3. Scientific and Professional Positions Requiring Specially Qualified Personnel (Public Law 313-Type Positions)

3-1. LEGAL BASIS

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a. **Public Law 313-type positions.** The Act of August 1, 1947 (Public Law 80-411), authorized designated agencies to establish and fix the compensation of specific numbers of scientific or professional positions. The pertinent authorize salary Public is to less than the compensation for GS-18 could be more than the highest rate for GS-18 under the Commission's A. Other laws with substantive the salary provisions, including the requirement of Commission approval of rate, have been enacted to cover additional Federal agencies. Appendix A lists the various department and agencies which currently have Public Law 313-type authorizations, the number of such positions currently authorized in each, and a citation of the statutory authority for each.

b. **Positions similar to Public Law 313-type positions.** Certain other statutes authorize designated agencies to establish and fix the compensation of specific numbers of scientific or professional positions within salary ranges which usually correspond to those authorized for Public Law 313-type positions, *without* a requirement for Commission approval. (Examples include the 425 positions authorized for the National Aeronautics and Space Administration by the National Aeronautics and Space Act of 1958 and similar authority in 28 U.S.C. 1120 for the Department of Agriculture positions of technical experts and scientists engaged in research and study of livestock diseases. These positions are mentioned here only to distinguish them from Public Law 313-type positions for the purpose of this subchapter.

3-2. CHARACTERISTICS OF PUBLIC LAW 313-TYPE POSITIONS

a. **General statutory requirement.** The language of Public Law 313 limits the agency authority conferred by the statute to scientific or professional positions established to conduct basic research and development activities. With certain exceptions, specially qualified persons must:

b. **Modification in special statute.** The corresponding statute for the Public Health Service (section 2082) of the Public Health Service Act varies from the general language of Public Law 313 only by permitting the Public Health Service to use this authority for executive as well as scientific or professional positions established to effectuate research and development activities which require the services of qualified scientific, professional, and administrative personnel. Another minor modification in functional coverage is provided in the statute applicable to the Department of Defense (section 1581 of title 10 of the United States Code). This provision (codified from Public Law 313) authorizes 530 positions "to carry out research and development relating to the national defense, military medicine and other activities of the Department of Defense that require the services of specially qualified scientists or professional personnel."

c. **Commission interpretation.** Except for the specific statutory differences noted above, the Commission holds that a Public Law 313-type position must be concerned with research and development in an area of work involving participation through the physical, biological, medical, or engineering sciences. The Com-

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mission's position in this respect is based on legislative intent as reflected in Congressional hearings, reports, and debates. Agencies may consult the Commission on questionable cases.

3-3. APPROVAL OF AGENCY PAY DETERMINATIONS AND ADJUSTMENTS

a. **Basic requirements.** Commission approval of a pay rate proposed by a department or agency for a Public Law 313-type position is required.

(1) *For original appointment to a position.* The Commission determines whether the position is of the type contemplated by the statute; whether the proposed incumbent is qualified; and whether the proposed rate is appropriate for this position and this incumbent. The Commission's determination of the appropriateness of the rate takes into consideration alignment with other positions and incumbent with comparable responsibilities and qualifications, in the same organization and in other agencies.

(2) *For appointments following the original appointment to a position.* A rate authorized for one incumbent of a position may not be appropriate for his successor. Accordingly, each proposed appointment requires that the agency and the Commission consider anew the question of what rate is appropriate.

(3) *For pay adjustments for occupied positions.* Agencies may propose adjustments in rates authorized for particular incumbents. Such adjustments may be warranted by changes in position content (e.g., changes in responsibility, difficulty, or importance of the position); by considerations paralleling those which underlie

within-grade increases under the Classification Act (e.g., length-of-service requirements combined with work or performance requirements); to preserve alignment with changes in rates paid to employees with comparable qualifications who occupy related positions; or to recognize increased professional stature attained by the incumbent.

b. **Agency justifications.** Agency requests for approval of appointment rates and pay adjustments must contain information which justifies the rates for which approval is sought. In some cases, little information may be needed beyond the required two copies of the position description and the required copy of the proposed appointee's Standard Form 57. The qualifications of the candidate or employee and the description of the position may clearly indicate a particular rate by alignment with other positions previously approved by the Commission. Similarly, when the agency follows a practice of rate advances similar to within-grade increases, a brief supplementary statement as to the length and character of service by the occupant of a position may suffice. However, apparent lack of alignment or an absence of precedents may require submission of additional material on the nature and importance of duties, qualifications, or other factors bearing on the determination of the appropriate rate of pay. Agencies may consult the central office of the Commission for additional guidance in specific cases.

c. **Effective date of Commission actions.** Neither the rate of compensation nor the qualifications of the proposed appointee may be approved retroactively.

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SUBPART C. SCIENTIFIC AND PROFESSIONAL POSITIONS REQUIRING SPECIALLY
 QUALIFIED PERSONNEL (PUBLIC LAW 313-TYPE POSITIONS)

Sec. 534.301. Approval of agency pay determinations and adjustments.

Each rate of compensation fixed for a scientific or professional position requiring specially qualified personnel under Public Law 80-313, or a similar statute, is subject to the prior approval of the Commission. The prior approval of the Commission is required for both original and subsequent appointments to these positions, and for the pay adjustment for an incumbent of such a position. When an agency requests the approval of the Commission for a rate of compensation or a pay adjustment, it shall submit adequate supporting information.